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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,079	03/01/2002	Ken Kerry	01-10053	4278

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EXAMINER

AMERSON, LORI BAKER

ART UNIT PAPER NUMBER

3764

DATE MAILED: 04/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary

Application No.

10/090,079

Applicant(s)

KERRY, KEN

Examiner

L. Amerson

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 2,3,5-8,10,11,14-19,21-25 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,5-8,10,11,14-19,21-25 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/1/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. The indicated allowability of claims 11, 17, 25 and 29 are withdrawn in view of the newly discovered reference(s) to that follow.

Claim Objections

2. Claims 18 and 29 are objected to because of the following informalities:

Claim 18, "said first surface" lacks antecedent basis. ;

Claim 29, line 4, "member" should read --means;

Claim 29, line 6, "form" should read --for--.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claims 2-3, 5, 6-7, 14-16, 17-19, 25 and 29 are rejected under 35

U.S.C. 103(a) as being unpatentable over Waters in view of Bradbury. Waters discloses a device having a hand-gripping member (47) positioned above a users head when the user is on his back and the member is capable of side-to-side motion, front-to-back, diagonal, rotational or combination thereof relative to the user and the motion is confined to a plane parallel to a surface on which the

device is supported; having a frame (12) and guiding member (14). Waters discloses all of the limitations of the claimed invention except for the device being foldable. Bradbury teaches a foldable device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a foldable device for the purpose of storage and easy transport. As to claims 2-3, the language has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure. As to claim 5, further comprising at least one guiding member (14) supported on the frame and a slideable member (fig. 3; col. 4, lines 3-4) coupled to the guiding member, where the grip member is coupled to the slide member. As to claim 7, the slide and guide member comprise smooth surfaces (fig. 1 and 4) for enabling the slideable member to slide on the guiding member. As to claims 14-16, Waters discloses a first and second guide (14) and a third guide (16); fig 1 that travel in direction A) and the third guide member is slideable of the first and second (fig. 1) where the guide members have smooth surfaces (fig. 4). As to claims 18-19, the handles are gripped by a user (fig. 1) and a further comprising a resistance element (34). Regarding the language, "said first surface" has not been given patentable weight. See the objection above. As to claims 25 and 29, see the paragraphs above for all claims.

b. Claims 5, 7-8, 10-11 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Verbick. Verbick discloses a device having a hand-gripping member (47); a guiding member (14); a slideable member (16). Regarding the


language, "positioned above a users head when the user is on his back and the member is capable of side-to-side motion, front-to-back, diagonal, rotational or combination thereof relative to the user and the motion is confined to a plane parallel to a surface on which the device is supported" has not been given patentable weight because the recitations are purely functional in nature and do not recite any structure. As to claim 7, the slide and guide member comprise smooth surfaces for enabling the slideable member to slide on the guiding member and the slideable member comprises at least one wheel (fig. 5). As to claims 10 and 23, the guide member is movably coupled to the frame (32). As to claims 21-22, 24, the grip member is mounted to the frame via a slideable attachment, or ball (figs. 3-4).

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (703) 306-5576. The examiner can normally be reached on Mon.-Fri from 8-5 p.m. Interviews Tue. and Thur..

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


L. Amerson